

CENTER FOR DISABILITY ACCESS
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Brian Whitaker

Plaintiff,

v.

Rose Hospitality, LLC, a
California Limited Liability
Company;

Defendants,

Case No.

**Complaint For Damages And
Injunctive Relief For
Violations Of:** Americans With
Disabilities Act; Unruh Civil
Rights Act

Plaintiff Brian Whitaker complains of Rose Hospitality, LLC, a California Limited Liability Company ("Defendants"), and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. He is substantially limited in his ability to walk. He suffers from a C-4 spinal cord injury. He is a quadriplegic. He uses a wheelchair for mobility.

2. Defendant Rose Hospitality, LLC, a California Limited Liability Company owns and operates the Rose Garden Inn located at 2740 Telegraph Ave., Berkeley, California, currently and at all times relevant to this complaint.

1 3. Plaintiff does not know the true names of Defendants, their business
2 capacities, their ownership connection to the property and business, or their
3 relative responsibilities in causing the access violations herein complained of,
4 and alleges a joint venture and common enterprise by all such Defendants.
5 Plaintiff is informed and believes that each of the Defendants herein, is
6 responsible in some capacity for the events herein alleged, or is a necessary
7 party for obtaining appropriate relief. Plaintiff will seek leave to amend when
8 the true names, capacities, connections, and responsibilities of other
9 Defendants are ascertained.

10 **JURISDICTION:**

11 4. The Court has subject matter jurisdiction over the action pursuant to 28
12 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
13 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

14 5. Pursuant to supplemental jurisdiction, an attendant and related cause
15 of action, arising from the same nucleus of operative facts and arising out of
16 the same transactions, is also brought under California's Unruh Civil Rights
17 Act, which act expressly incorporates the Americans with Disabilities Act.

18 6. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is
19 founded on the fact that the real property which is the subject of this action is
20 located in this district and that Plaintiff's cause of action arose in this district.

21 **PRELIMINARY STATEMENT**

22 7. This is a lawsuit challenging the reservation policies and practices of a
23 place of lodging. Plaintiff does not know if any physical or architectural
24 barriers exist at the hotel and, therefore, is not claiming that that the hotel has
25 violated any construction-related accessibility standard. Instead, this is about
26 the lack of information provided on the hotel's reservation website that would
27 permit plaintiff to determine if there are rooms that would work for him.

28 8. After decades of research and findings, Congress found that there was

1 a “serious and pervasive social problem” in America: the “discriminatory
2 effects” of communication barriers to persons with disability. The data was
3 clear and embarrassing. Persons with disabilities were unable to “fully
4 participate in all aspects of society,” occupying “an inferior status in our
5 society,” often for no other reason than businesses, including hotels and
6 motels, failed to provide information to disabled travelers. Thus, Congress
7 decided “to invoke the sweep of congressional authority” and issue a “national
8 mandate for the elimination of discrimination against individuals with
9 disabilities,” and to finally ensure that persons with disabilities have “equality
10 of opportunity, full participation, independent living” and self-sufficiency.

11 9. As part of that effort, Congress passed detailed and comprehensive
12 regulations about the design of hotels and motels. But, as importantly,
13 Congress recognized that the physical accessibility of a hotel or motel means
14 little if the 61 million adults living in America with disabilities are unable to
15 determine which hotels/motels are accessible and to reserve them. Thus,
16 there is a legal mandate to provide a certain level of information to disabled
17 travelers.

18 10. But despite the rules and regulations regarding reservation procedures,
19 a 2019 industry article noted that: “the hospitality sector has largely
20 overlooked the importance of promoting accessible features to travelers.”

21 11. These issues are of paramount important. Persons with severe
22 disabilities have modified their own residences to accommodate their unique
23 needs and to ameliorate their physical limitations. But persons with disabilities
24 are never more vulnerable than when leaving their own residences and having
25 to travel and stay at unknown places of lodging. They must be able to ascertain
26 whether those places work for them.

27 **FACTUAL ALLEGATIONS:**

28 12. Plaintiff planned on making a trip in October of 2020 to the Berkeley,

1 California, area.

2 13. He chose the Rose Garden Inn located at 2740 Telegraph Ave.,
3 Berkeley, California because this hotel was at a desirable price and location.

4 14. Due to Plaintiff's condition, he is unable to, or seriously challenged in
5 his ability to, stand, ambulate, reach objects, transfer from his chair to other
6 equipment, and maneuver around fixed objects.

7 15. Thus, Plaintiff needs an accessible guestroom and he needs to be given
8 information about accessible features in hotel rooms so that he can confidently
9 book those rooms and travel independently and safely.

10 16. On September 12, 2020, while sitting bodily in California, Plaintiff
11 went to the Rose Garden Inn reservation website at
12 <http://www.rosegardeninn.com> seeking to book an accessible room at the
13 location.

14 17. This website reservation system is owned and operated by the
15 Defendants and permits guests to book rooms at the Rose Garden Inn.

16 18. Plaintiff found that there was insufficient information about the
17 accessible features in the "accessible rooms" at the Hotel to permit him to
18 assess independently whether a given hotel room would work for him.

19 19. For example, Plaintiff cannot transfer from his wheelchair to a toilet
20 unless there are grab bars at the toilet to facilitate that transfer. But the Hotel
21 reservation website does not provide any information about the existence of
22 grab bars for the accessible guestroom toilets. This is critical information for
23 the plaintiff.

24 20. As another example, Plaintiff has had tremendous difficulty with using
25 lavatory sinks in the past because the plumbing underneath the sink was not
26 wrapped with insulation to protect against burning contact to his knees. Here,
27 the Hotel reservation website provides no information about whether the
28 plumbing is wrapped with insulation to prevent contact.

1 21. As another example, Plaintiff needs to know that the bed has a
2 compliant clear space next to it so he can safely transfer from his wheelchair to
3 the bed. Here the Hotel website provides no information about the
4 accessibility of the clear space next to the bed.

5 22. Plaintiff does not need an exhaustive list of accessibility features.
6 Plaintiff does not need an accessibility survey to determine if a room works for
7 him. Plaintiff, like the vast majority of wheelchair users, simply needs a
8 handful of features to be identified and described with a modest level of detail:

- 9 • For the doors, Plaintiff simply needs to know if he can get into the hotel
10 room and into the bathroom. This is a problem that has created
11 tremendous problems for the Plaintiff in the past. A simple statement
12 that the hotel room entrance and interior doors provide at least 32
13 inches of clearance is enough to provide Plaintiff this critical piece of
14 information about whether he can fit his wheelchair into the hotel
15 rooms.
- 16 • For the beds themselves, the only thing Plaintiff needs to know (and the
17 only thing regulated by the ADA Standards) is whether he can actually
18 get to (and into) the bed, i.e., that there is at least 30 inches width on the
19 side of the bed so his wheelchair can get up next to the bed for transfer.
20 This is critical information because Plaintiff cannot walk and needs to
21 pull his wheelchair alongside the bed.
- 22 • For the desk where Plaintiff will eat and work, Plaintiff simply needs to
23 know that it has sufficient knee and toe clearance so that he can use it.
24 A simple statement like “the desk provides knee and toe clearance that
25 is at least 27 inches high, 30 inches wide, and runs at least 17 inches
26 deep” is more than sufficient. Because Plaintiff is confined to a
27 wheelchair, he needs to know this information to determine if the desk
28 is accessible to and useable by him.

- 1 • For the restroom toilet, Plaintiff only needs to know two things that
2 determine if he can transfer to and use the toilet; (1) that the toilet seat
3 height is between 17-19 inches (as required by the ADA Standards) and
4 (2) that it has the two required grab bars to facilitate transfer.
- 5 • For the restroom sink, the Plaintiff two things that will determine
6 whether he can use the sink from his wheelchair: (1) can he safely get his
7 knees under the toilet? To wit: does the sink provide the knee clearance
8 (27 inches high, 30 inches wide, 17 inches deep) and is any plumbing
9 under the sink wrapped with insulation to protect against burning
10 contact? The second thing is whether the lavatory mirror is mounted at
11 a lowered height so that wheelchair users can see it. A simple statement
12 like: “the lavatory sink provides knee clearance of at least 30 inches
13 wide, 27 inches tall and 17 inches deep, all of the under-sink plumbing
14 is wrapped, and the lowest reflective edge of the mirror is no more than
15 40 inches high” would suffice.
- 16 • Finally, for the shower, Plaintiff needs to know only a handful of things:
17 (1) what type of shower it is (transfer, standard roll-in, or alternate roll-
18 in), (2) whether it has an in-shower seat; (3) that there are grab bars
19 mounted on the walls; (4) that there is a detachable hand-held shower
20 wand for washing himself and (5) that the wall mounted accessories and
21 equipment are all within 48 inches height.

22 23. This small list of items are the bare necessities that Plaintiff must know
23 to make an independent assessment of whether the “accessible” hotel room
24 works for him. These things comprise the basics of what information is
25 reasonably necessary for Plaintiff (or any wheelchair user) to assess
26 independently whether a given hotel or guest room meets his or her
27 accessibility needs.

28 24. Other accessibility requirements such as slopes of surfaces, whether the

1 hand-held shower wand has a non-positive shut off valve, the temperature
2 regulator, the tensile strength and rotational design of grab bars, and so many
3 more minute and technical requirements under the ADA are beyond what is a
4 reasonable level of detail and Plaintiff does not expect or demand that such
5 information is provided.

6 25. But because the Defendants have failed to identify and describe the core
7 accessibility features in enough detail to reasonably permit individuals with
8 disabilities to assess independently whether a given hotel or guest room meets
9 his accessibility needs, the Defendants fail to comply with its ADA obligations
10 and the result is that the Plaintiff is unable to engage in an online booking of
11 the hotel room with any confidence or knowledge about whether the room will
12 actually work for him due to his disability.

13 26. This lack of information created difficulty for the Plaintiff and the idea
14 of trying to book this room -- essentially ignorant about its accessibility --
15 caused difficulty and discomfort for the Plaintiff and deterred him from
16 booking a room at the Hotel

17 27. Plaintiff travels frequently and extensively, not only for non-litigation
18 reasons but also because he is an ADA tester and actively engaged in finding
19 law breaking businesses and hauling them before the courts to be penalized
20 and forced to comply with the law.

21 28. As he has in the past, Plaintiff will continue to travel to Berkeley on a
22 regular and ongoing basis and will patronize this Hotel once it has been
23 represented to him that the Defendant has changed its policies to comply with
24 the law and to determine if the Hotel is physically accessible as well as
25 complying with required reservation procedures. Plaintiff will, therefore, be
26 discriminated against again, i.e., be denied his lawfully entitled access, unless
27 and until the Defendant is forced to comply with the law.

28 29. Plaintiff has reason and motivation to use the Defendant's Hotel

1 reservation system and to stay at the Defendant's Hotel in the future. Among
 2 his reasons and motivations are to assess these policies and facilities for
 3 compliance with the ADA and to see his lawsuit through to successful
 4 conclusion that will redound to the benefit of himself and all other similarly
 5 situated. Thus, Plaintiff routinely revisits and uses the facilities and
 6 accommodations of places he has sued to confirm compliance and to enjoy
 7 standing to effectuate the relief promised by the ADA.

8 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**

9 **WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all
 10 Defendants.) (42 U.S.C. section 12101, et seq.)

11 30. Plaintiff re-pleads and incorporates by reference, as if fully set forth
 12 again herein, the allegations contained in all prior paragraphs of this
 13 complaint.

14 31. Under the ADA, it is an act of discrimination to fail to make reasonable
 15 modifications in policies, practices, or procedures when such modifications
 16 are necessary to afford goods, services, facilities, privileges advantages or
 17 accommodations to person with disabilities unless the entity can demonstrate
 18 that taking such steps would fundamentally alter the nature of the those goods,
 19 services, facilities, privileges advantages or accommodations. See 42 U.S.C. §
 20 12182(B)(2)(A)(ii).

21 32. Specifically, with respect to reservations by places of lodging, a
 22 defendant must ensure that its reservation system, including reservations
 23 made by "any means," including by third parties, shall:

- 24 a. Ensure that individuals with disabilities can make
- 25 reservations for accessible guest rooms during the same
- 26 hours and in the same manner as individuals who do not
- 27 need accessible rooms;
- 28 b. Identify and describe accessible features in the hotels and

1 guest rooms offered through its reservations service in
 2 enough detail to reasonably permit individuals with
 3 disabilities to assess independently whether a given hotel
 4 or guest room meets his or her accessibility needs; and

- 5 c. Reserve, upon request, accessible guest rooms or specific
 6 types of guest rooms and ensure that the guest rooms
 7 requested are blocked and removed from all reservations
 8 systems.

9 *See* 28 C.F.R. § 36.302(e).

10 33. Here, the defendant failed to modify its reservation policies and
 11 procedures to ensure that it identified and described accessible features in the
 12 hotels and guest rooms in enough detail to reasonably permit individuals with
 13 disabilities to assess independently whether a given hotel or guest room meets
 14 his or her accessibility needs and failed to ensure that individuals with
 15 disabilities can make reservations for accessible guest rooms during the same
 16 hours and in the same manner as individuals who do not need accessible
 17 rooms.

18 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
 19 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.
 20 Code § 51-53.)

21 34. Plaintiff repleads and incorporates by reference, as if fully set forth
 22 again herein, the allegations contained in all prior paragraphs of this
 23 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,
 24 that persons with disabilities are entitled to full and equal accommodations,
 25 advantages, facilities, privileges, or services in all business establishment of
 26 every kind whatsoever within the jurisdiction of the State of California. Cal.
 27 Civ. Code §51(b).

28 35. The Unruh Act provides that a violation of the ADA is a violation of the

1 Unruh Act. Cal. Civ. Code, § 51(f).

2 36. Defendants' acts and omissions, as herein alleged, have violated the
3 Unruh Act by, inter alia, failing to comply with the ADA with respect to its
4 reservation policies and practices.

5 37. Because the violation of the Unruh Civil Rights Act resulted in difficulty
6 and discomfort for the plaintiff, the defendants are also each responsible for
7 statutory damages, i.e., a civil penalty. *See* Civ. Code § 52(a).

8 **PRAYER:**

9 Wherefore, Plaintiff prays that this Court award damages and provide
10 relief as follows:

11 1. For injunctive relief, compelling Defendants to comply with the
12 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
13 plaintiff is not invoking section 55 of the California Civil Code and is not
14 seeking injunctive relief under the Disabled Persons Act at all.

15 2. Damages under the Unruh Civil Rights Act, which provides for actual
16 damages and a statutory minimum of \$4,000 for each offense.

17 3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant
18 to 42 U.S.C. § 12205; and Cal. Civ. Code § 52(a).

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20
21 Dated: January 3, 2021

CENTER FOR DISABILITY ACCESS

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25 By: _____

26 Russell Handy, Esq.

27 Attorneys for Plaintiff
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